APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-492

STATE OF OHIO,

Petitioner,

vs.

TERRY L. GALLAGHER,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petition for Certiorari Filed October 29, 1974

Certiorari Granted March 31, 1975

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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO CRIMINAL DIVISION

STATE OF OHIO,
Plaintiff-Appellee,

VS.

TERRY L. GALLAGHER,
Defendant-Appellant.

RANDAL A. ANDERSON, *Asst.*
Prosecuting Attorney for
Plaintiff-Appellee
JACK T. SCHWARZ,
Attorney for Defendant

Court of Appeals No. 4158

Common Pleas No. 72-CR-826

TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES, AND ALL ORIGINAL PAPERS

1.	July 7, 1972	Transcript and all papers from Dayton Municipal Court filed — bond $10,000.
2.	July 20, 1972	Indictment for Armed Robbery filed.

3.	Aug. 16, 1972	Entry filed August 15, 1972. Defendant, waived, plead not guilty. Pretrial set for August 21, 1972—bond continued. RICE
4.	Aug. 31, 1972	Entry filed — appointing James P. Hickey, as counsel for defendant. RICE
5.	Aug. 29, 1972	Entry filed — ordering $50.00 paid James P. Hickey, for counsel fees. RICE
6.	Aug. 29, 1972	Entry filed—appointing Gus Niarchos, as counsel. RICE
7.	Sep. 15, 1972	Entry filed, James P. Hickey permitted to withdraw as attorney for Gallagher. RICE
8.	Sep. 28, 1972	Entry filed — motion of defendant to suppress identification is set for hearing October 17, 1972. RICE
9.	Oct. 3, 1972	Motion filed for an order authorizing the preparation and payment of the transcript of proceedings at the preliminary hearing; order directing the prosecuting attorney to furnish defense counsel — names and addresses of all witnesses; order reducing the amount of bond — filed by attorney for defendant.
10.	Oct. 11, 1972	Entry filed, setting further proceedings on motions: Motion authorizing preparation and payment of transcript is sustained. Branch 2

		and 3 of motions of October 3, 1972, will be determined at the same time of defendants' motion to suppress identification which is already set for hearing October 17, 1972. RICE
12.	Oct. 27, 1972	Stenographers Certificate filed -- Hargrose, Reporter.
13.	Nov. 2, 1972	Waiver of Jury filed.
14.	Nov. 14, 1972	Stenographers Certificate filed — Futrell, Reporter.
15.	Nov. 16, 1972	Verdict filed—court finds defendant guilty as charged. RICE
16.	Nov. 30, 1972	Stenographers Certificate filed — Futrell, Reporter.
17.	Nov. 30, 1972	Entry filed, appointing Jack Schwarz, as counsel. RICE
18.	Nov. 28, 1972	Entry filed—ordering $250.00 paid Jack Schwarz, for counsel fees. RICE
19.	Dec. 6, 1972	Entry filed November 30, 1972. Defendant, sentenced to O.S.P., for a period not less than ten (10) nor more than twenty-five (25) years. RICE
20.	Dec. 6, 1972	Warrant to convey issued to Sheriff.
21.	Dec. 11, 1972	Motion filed for the court to order the Court Reporter to prepare a transcript of the trial and to be prepared at the expense of the

state. Motion filed by attorney for defendant.

22. Dec. 11, 1972 Notice of **Appeal** filed by attorney for defendant.

(Jurat omitted in Printing)

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

VS.

TERRY L. GALLAGHER,
Defendant.

Case No. 72-CR-826
(Judge Walter H. Rice)

VERDICT

The captioned cause came on to be heard, upon its merits, before the Court sitting as the trier of fact, a jury having been waived by the defendant in open Court. Issues were joined by the defendant's entering a plea of not guilty to an indictment charging him with Armed Robbery.

Upon due consideration of the facts adduced at the hearing on the merits of the captioned cause, as well as upon a thorough consideration of the law that applies to the facts as found, it is the opinion of the Court that the State has sustained its burden of proof beyond a reasonable doubt of each and every essential element of the offense of Armed Robbery. Accordingly, it is the opinion of the Court that the defendant is and is hereby declared to be GUILTY AS CHARGED.

The captioned cause is ordered continued until Tues-

day, November 28, 1972, for further proceedings according to law.

Copies of the above were sent to all parties listed below by ordinary mail this 16 day of November, 1972.

APPROVED:

(s) WALTER RICE
WALTER H. RICE, *Judge*

CC:
JOHN SLAVENS, Assistant Prosecuting Attorney.
JACK T. SCHWARZ, Attorney for Defendant.
ASSIGNMENT OFFICE.

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

vs.

TERRY L. GALLAGHER,
Defendant.

Case No. 72-CR-826

TERMINATION ENTRY

The defendant having been convicted of the offense of Armed Robbery was this 30th day of November, 1972 brought before the Court and was inquired of if he had anything to say why judgment should not be pronounced against him, and having nothing further to say than he hath already said,

It is therefore Ordered and Adjudged by the Court that the defendant, Terry L. Gallagher, be imprisoned at the Ohio State Penitentiary for a period not less than ten (10) nor more than twenty-five (25) years, and pay the costs of prosecution taxed at $ ..... Defendant is to remain in the Montgomery County Jail until December 7, 1972 pending a report from the Adult Probation Department.

The Court instructed the defendant that he has a right to file a direct appeal to the Second District Court of Appeals within thirty (30) days and that if indigent, a right to prosecute an appeal without expense and with counsel appointed by the Court to be paid by the State. Upon inquiry the defendant indicated in open Court that

he understood his rights of appeal as explained by the Court.

Attorney Jack Schwarz is hereby appointed as Counsel for Appeal. Defendant is sentenced under Section 2901.13 of the Ohio Revised Code.

APPROVED:

(s) WALTER RICE
Judge, WALTER H. RICE

LEE C. FALKE
Prosecuting Attorney

By (s) JOHN M. SLAVENS
JOHN M. SLAVENS
Assistant Prosecuting Attorney

cc: Defense Counsel, Jack Schwarz, 604 American Bldg.

MONTGOMERY COUNTY COURT OF APPEALS

STATE OF OHIO,
Plaintiff-Appellee,

VS.

TERRY L. GALLAGHER,
Defendant-Appellant.

Supreme Court Case No. 73-623

Court of Appeals No. 4158

LEE C. FALKE, *Pros. Attorney*
By Randal A. Anderson, Jr.
41 N. Perry St., Dayton, Ohio

JACK T. SCHWARZ
604 American Building
Dayton, Ohio 45402
Attorney for Defendant-Appellant

TRANSCRIPT OF THE DOCKET AND JOURNAL ENTRIES, AND ALL ORIGINAL PAPERS

1.	December 11, 1972	Notice of Appeal filed in Common Pleas Court, Case No. 72-CR-826. Appeal from Decision rendered November 30, 1972, finding Defendant guilty of offense of armed robbery.

2.	December	12, 1972	Transcript of the docket and entries filed.
3.	January	16, 1973	Transcript of Proceedings filed. (2 Vol. 1 Env.) Attorneys notified by mail.
4.	February	8, 1973	Entry filed. Time extended to Appellant to 2-28-73 for Brief.
5.	March	5, 1973	Entry filed. Time extended to Appellant to 3-15-73 for Brief.
6.	April	10, 1973	Brief of Defendant-Appellant filed.
7.	April	30, 1973	Brief of Plaintiff - Appellee filed.
8.	May	30, 1973	Opinion filed. Judgment will be affirmed.
9.	June	6, 1973	Entry filed. Judgment of conviction and sentence is affirmed.
10.	June	28, 1973	Entry filed. Jack Schwarz to receive $250.00 atty. fee.
11.	June	29, 1973	Notice of Appeal to Supreme Ct. of Ohio filed.
12.	November	12, 1973	Certified Copy of Entry from Supreme Ct. filed. Jack T. Schwarz of Dayton is appointed to represent appellant in appeal to Supreme Ct.
13.	November	13, 1973	Certified Copy of Entry from Supreme Court. Motion For Leave To Appeal is allowed.
14.	November	13, 1973	Order To Certify Record filed from Supreme Ct. of Ohio.

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,
Plaintiff-Appellee,

VS.

TERRY L. GALLAGHER,
Defendant-Appellant.

Case No. 4158 C.A.
(C.C.P. 72-CR-826)

ENTRY

This cause came on to be heard upon the appeal of the Defendant-Appellant, Terry L. Gallagher, upon questions of law from the conviction, judgment and sentence of the Court of Common Pleas of Montgomery County, Ohio; said appeal was submitted to the Court upon the assignment of errors and the briefs together with oral arguments of counsel both for the Defendant-Appellant and for the Plaintiff-Appellee and upon the transcript of the complete record including all the original papers, exhibits and bill of exceptions;

And the Court, after careful consideration thereof, finds that there is no prejudicial error to the rights of the Appellant and the judgment of conviction and sentence is hereby affirmed.

(s) CALVIN CRAWFORD, P. J.
CALVIN CRAWFORD, P. J.
Judge
(s) PAUL SHERER
PAUL SHERER
Judge

(See page 22ff of the Petition for Writ of Certorari for the Opinion of the Court of Appeals)

THE SUPREME COURT OF THE STATE OF OHIO

1973 Term

To wit: November 8, 1973

THE STATE OF OHIO,
City of Columbus.

STATE OF OHIO,
Appellee,

vs.

TERRY L. GALLAGHER,
Appellant.

No. 73-623

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS
For Montgomery County

It is ordered by the Court that this motion is allowed.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 8th day of November, 1973.

THOMAS L. STARTZMAN, Clerk.
By (s) SAM F. ADKINS, Deputy.

THE SUPREME COURT OF THE STATE OF OHIO

1973 Term

To wit: November 9, 1973

THE STATE OF OHIO,
City of Columbus.

STATE OF OHIO,
Appellee,

vs.

TERRY L. GALLAGHER,
Appellant.

No. 73-623

ENTRY

The court having allowed a motion for leave to appeal from the Court of Appeals for Montgomery County in this cause and it appearing to the court that the above named appellant is indigent, it is ordered by the court that Attorney Jack T. Schwarz of Dayton be and hereby is appointed to represent the appellant in this court and proceed to file a brief on the merits.

.....
CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 9th day of November, 1973.

THOMAS L. STARTZMAN Clerk.
By (s) SAM F. ADKINS, Deputy.

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

To the Clerk of Court of Appeals for Montgomery County, Dayton, Ohio

STATE OF OHIO,
Appellee,

VS.

TERRY L. GALLAGHER,
Appellant.

ORDER TO CERTIFY RECORD

S.C. Case No. 73-623

C.A. Case No. 4158

Pursuant to the provisions of Section 10, Rule II, of the Rules of Practice of The Supreme Court of Ohio, you are hereby Ordered to prepare and forward to this office a certified transcript of docket and journal entries together with all the original papers in the above captioned case. The transcript and papers shall be transmitted to this office within ten days.

Witness my hand and the seal of the Supreme Court this 8th day of November, 1973.

THOMAS L. STARTZMAN, Clerk.

By (s) SAM F. ADKINS, Deputy.

(See page 13ff of the Petition for Writ of Certiorari for the Opinion of The Ohio Supreme Court)

THE SUPREME COURT OF THE STATE OF OHIO

1974 Term

To wit: June 26, 1974

THE STATE OF OHIO,
City of Columbus.

THE STATE OF OHIO,
Appellee,

VS.

TERRY L. GALLAGHER,
Appellant.

No. 73-623

APPEAL FROM THE COURT OF APPEALS

For Montgomery County

This cause, here on appeal from the Court of Appeals for Montgomery County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is reversed for the reasons stated in the opinion filed herein; and, cause remanded to the Court of Common Pleas for further proceedings in accordance with law.

It is ordered and adjudged also that appellant recover from appellee its costs expended in this Court; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Montgomery County for entry.

(Jurat omitted in printing)

THE SUPREME COURT OF THE STATE OF OHIO

1974 Term

To wit: June 26, 1974

THE STATE OF OHIO,
City of Columbus.

THE STATE OF OHIO,
Appellee,

vs.

TERRY L. GALLAGHER,
Appellant.

No. 73-623

MANDATE

To the Honorable Common Pleas Court Within and for the County of Montgomery, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Judgment of the Court of Appeals reversed and cause remanded to the Common Pleas Court for further proceedings in accordance with law, for the reasons set forth in the opinion rendered herein.

THOMAS L. STARTZMAN, Clerk.

..... 19 .....

.....

..... Deputy

THE SUPREME COURT OF THE STATE OF OHIO

1974 Term

To wit: July 31, 1974

THE STATE OF OHIO,
City of Columbus.

THE STATE OF OHIO,
Appellee,

vs.

TERRY L. GALLAGHER,
Appellant.

No. 73-623

REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page .....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 31st day of July 1974

THOMAS L. STARTZMAN, Clerk.

By (s) SAM F. ADKINS, Deputy.

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO,
Plaintiff,

vs.

TERRY L. GALLAGHER,
Defendant.

Case No. 72-CR-826
Court of Appeals No. 4158
(Judge Walter H. Rice)

ENTRY ORDERING DEFENDANT'S RELEASE ON OWN RECOGNIZANCE

The Supreme Court of Ohio having reversed the judgment of the Court of Appeals and having remanded the captioned cause to the Court of Common Pleas for further proceedings in accordance with law, and the office of the Prosecuting Attorney, having indicated a desire to seek a writ of certiorari from the United States Supreme Court, it is the order of this Court that the Defendant be released upon his own recognizance, during the pendency of procedures before the United States Supreme Court.

It is the further order of this Court that the Defendant maintain communication, by correspondence, with his attorney, Jack T. Schwartz, every two weeks during the pendency of further appeals.

Defendant to be released from custody upon filing of his own recognizance bond.

Copies of the above were sent to all parties listed below by ordinary mail on the date of filing.

APPROVED:

.....
WALTER H. RICE, *Judge*

CC: RANDAL A. ANDERSON, JR., Attorney for Plaintiff

JACK T. SCHWARTZ, Attorney for Defendant

(1:55 p.m., November 3, 1972) **(Page 99)**

THE COURT: Mr. Slavens, call your next witness.

MR. SLAVENS: Yes, Your Honor. State will call Detective Lewis Wright.

Lewis Wright,

being duly sworn, according to law, took the witness stand and testified as follows:

Direct Examination

By Mr. Slavens:

Q. Will you state your name please and your occupation? A. Lewis Wright, Detective, Montgomery County Sheriff's Department.

Q. And for how long have you been so employed with the Sheriff's Office? A. Ten years.

Q. And for how long have you been employed as a detective? A. A little over two years.

Q. And were you so employed as a detective on the date of June 22, 1972? A. I was.

Q. And in the detective section of the Montgomery County Sheriff's Office, are you assigned any particular type of complaints? A. Yes. I'm assigned to robberies, all armed robberies and all unarmed robberies. **(Page 100)**

Q. And were you involved as a detective in the—strike that. Do you have knowledge of the arrest or apprehension of an individual by the name of Terry Gallagher? A. Yes, I do.

Q. Do you know when the arrest occurred? A. The arrest occurred in July. I believe it was 18th or 19th, something like that. It was on a weekday night. We had placed a pick-up out on him earlier that day. One of our Harrison crews had stopped him at the Wagoner—at Needmore and Dixie, and I was called out there to make identification.

Q. Now, you say this occurred in June or in July? A. I think it was in July. I think it was after vacation or before vacation. I don't remember.

Q. And, now, do you recall whether or not you ever had a conversation with Mr. Gallagher, sometime after his arrest? A. Well, after the initial arrest, yes. I went out to the scene and identified him. They then took him down to the county jail and incarcerated him on investigation of armed robbery. The next day I called Detective Walsh from the Dayton Police Department, advised him we had him and he came over at that time and an interview was conducted in our interrogation rooms.

Q. When you say our interrogation rooms, you're referring to the Montgomery County Jail Building? A. Yes. detective section. **(Page 101)**

Q. And other than yourself and Mr. Gallagher and Detective Walsh, was anybody else present during the time of — A. Yes. Mr. Helson from the State Parole Office was there also.

Q. And do you know as to how Mr. Helson became aware Mr. Gallagher was in custody? A. Yes, we advised him in the morning around nine o'clock right after roll call, that he was in custody and he came over.

Q. And —

.....

(THEREUPON, State's Exhibit No. 2 was marked for identification.)

.....

Q. Now, on the date when the interview was conducted with the people present you referred to, do you recall whether or not any forms were executed on that day? A. Yes. The usual Rights Waiver was read and explained to him.

THE COURT: Let me back up just a moment, Mr. Slavens. I assume if this is to be a statement oral or written, Mr. Schwarz, that you would have objection to it.

MR. SCHWARZ: If there's going to be an introduction of evidence of a statement, yes, Sir. He hadn't gotten to that point. Just in the Rights Waiver. So, I was withholding my objections until that time.

THE COURT: Let's let the record show that at this time Court has been advised that there will be a statement **(Page 102)** offered, that we are, in effect, no longer on the record as far as the trial on the merits is concerned and we will go into the question of the voir dire or

separate hearing on the question of the admissibility of the statement. I think that discussion concerning the Rights Waiver is pertinent to such a limited hearing and this is why I interrupted at this point.

MR. SLAVENS: Yes, Your Honor.

THE COURT: Go ahead, Sir.

Q. Detective Wright, let me hand you an item which has been marked State's Exhibit 2 for Identification purposes and I'll ask you to state what that is? A. Yeah. This is the pre-interview form used by both the Sheriff's Department and Dayton Police. Right hand corner it has the date of June 22, 1972. Under it, the time of 10:35 a.m. The place would be the Sheriff's detective section. Want me to go all the way through it then?

Q. Yeah. We'll get to that. Is that the form that was—was that form executed on the date of June 22, 1972? A. Yes, it was.

Q. And is that the form that was executed on the date that you, yourself, the defendant, Detective Walsh and I believe Mr. Helson were present? A. Yes, Sir.

Q. That you were referring to? A. Yes. **(Page 103)**

Q. And that was June 22nd? Is that correct? A. June 22, 1972.

Q. And the date that the arrest occurred? Do you recall what that was? A. The date it would have occurred would have been June 21st. I left on the 23rd for vacation, so it was just before.

Q. And will you explain the procedures that occurred —that took place that day? Who arrived from outside the building and when and where, from which did the defendant arrive to the interview room? A. When I—after roll call, I called the—Detective Walsh of the Dayton Police Department and Mr. Helson, both within a matter of minutes, and advised them that we had Terry

Gallagher and at that point they said they'd be over. So I went down to the jail and brought him up to our interrogation room, to our detective section, and upon the arrival of both Mr. Helson and Detective Walsh, we went into the interview room.

Q. Will you describe please the interview room? A. The interview room was five foot by six foot room I suppose. I don't know the size. It has no windows. It has a table. I think there was four or five, maybe four chairs in it that day. It's well lit and it's adjacent to the actual squad room or detective section.

Q. And when Mr. Gallagher arrived was that form explained to him? **(Page 104)** A. Yes, Detective Walsh read it to him.

Q. And when Detective Walsh read him that form, what did Detective Walsh do? A. Well, the first thing he did he filled in the top part with his full name, Terry Francis Gallagher and asked him where he was from and it was Dayton, Ohio. His age, which was 24. Put down he was told by Detective R. D. Walsh of the Dayton Police Department that he went into the Rights under Miranda and asked him, you know.

Q. You were present during this time? A. Yes.

Q. Other than the people that you referred to, Mr. Helson, yourself, Detective Walsh, Mr. Gallagher, did any other person come and go during the interview with Mr. Gallagher? A. During the course of the interview, after the Rights and so on?

Q. Yes, even after the Rights who was there? A. Brought up another inmate by the name of Richard Morgan Sorrell who had been charged previously.

Q. And what procedures did Detective Walsh utilize to explain this form to Terry Gallagher? A. Well, he read each paragraph in it. He also asked him—after he

finished reading it, he asked him first how many years of **(Page 105)** schooling he had, which was ten. Asked him if he was able to read and write and fully understand everything being read to him. And he went through the Rights again and read them to him. He signed—he said he understood and wanted to sign.

Q. Now, what would Detective Walsh do after he completed each sentence or paragraph as you referred to it I believe? A. I believe he asked him if he understood what he just read him.

MR. SCHWARZ: Object to what he believes, Your Honor.

THE COURT: Would SUSTAIN the objection.

Q. Do you recall whether or not that happened or— A. No, I don't recall really.

Q. Okay. After the form was explained to Mr. Gallagher or read to Mr. Gallagher, what, if anything, did Mr. Gallagher do? A. He signed the signature on the bottom right hand corner.

Q. And did—A. He made an oral—he was asked, do you understand what has just been read to him. He did. He indicated he did and signed his name.

Q. And was that form witnessed by you? A. Yes.

Q. And your signature appears thereon? A. In the lower left hand corner. **(Page 106)**

Q. Any other signatures other than yourself's and Terry Gallagher's? A. Detective Walsh's signature.

Q. Were those executed at that time? A. Yes.

Q. And did Mr. Gallagher indicate a willingness to carry on a conversation with you or Detective Walsh? A. Yes, he did.

Q. And how did he manifest that? A. Well, first of all, after he was advised of all his Rights, he said he understood the meaning of everything that he'd been

told. He signed the form, and he indicated that he would talk to us.

Q. All right. And prior to any conversation were there any threats made to him? A. No.

Q. Were any promises made to him? A. No.

Q. Was there any type of coercion used by yourself? A. No.

Q. Were there any type of coercion of any nature utilized by Detective Walsh? A. No.

Q. Now, for the record Sir, would you read the last paragraph of the form, the last paragraph before the number of schooling years. **(Page 107)** A. It says, "with full understanding and knowledge of these rights, I hereby freely and voluntarily waive them by signing my name below. I am willing to answer any questions of my own free will, without force or fear, and hereby state by signing my name below that no threats or promises have been made to me by anyone. I wish to make a free and voluntary statement."

Q. And that was one of the paragraphs read to Mr. Gallagher? A. Yes.

Q. And after that paragraph was read to him is that when—or after that he did sign that particular form? A. He signed it after that. It was completed.

Q. And after the form was executed, and Mr. Gallagher indicated he wished to carry on a conversation, what occurred? A. Well, he signed the form. We witnessed it and then at that point, Detective Walsh began interviewing him in regards to some robberies.

Q. Now, on the time that Mr. Gallagher was being interviewed he had been apprehended by the Montgomery County Sheriff's authorities? A. That's correct.

Q. And during the interview with Mr. Gallagher on the date of June 22nd, was he inquired of as to an armed robbery which occurred at the 7-11 Store on Xenia

Avenue on the date of May 27th? A. Yes, he was. **(Page 108)**

Q. Explain what occurred in reference to that particular armed robbery?

MR. SCHWARZ: Object. We're just on hearing as to the admissibility at this point, Your Honor.

THE COURT: This is the Court's understanding.

Q. Well, for what length of period of time did the interview take place if you can recall? A. They were over in the—they were brought up in the detective section approximately 9:15. He was brought up about 9:15. We took him down in time for lunch which I believe is 11:30. At that point when he was taken down—or I might add when brought down for lunch he was then booked out and turned over to the Dayton Police Department and was taken over to the Safety Building.

Q. All right. This is after the statements were made to him by you? A. Yes.

Q. Do you know for what length of period of time he remained over in the City Safety Building after this interview took place? A. I think it was a day or two, maybe three days. I don't remember really. He was taken over there and charged and arraigned over there and brought back over.

Q. I see. All right. Now, a conversation did take place on June 22nd? A. Yes. **(Page 109)**

Q. And since that date—strike that last question.

Mr. Slavens: I have nothing further, Your Honor.

The Court: Mr. Schwarz, on Cross.

.....

Cross Examination

By Mr. Schwarz:

Q. Detective, I believe you said at the beginning that you went out to pick this fellow up here, Terry Gallagher, on July the 8th or the 9th? Do you recall saying that?

A. Yes, Sir.

Q. Well, is that the date you picked him up or the 21st? A. Just about vacation. It was in June.

Q. It was in— A. I left on vacation on the 23rd which is a Friday.

Q. So you were mistaken as to that first date? A. Yes.

Q. Is there anything else in this statement that you've given with regard to how the Rights Waiver was signed or about the testimony you're going to give as to what was said that you may have made—may have forgot?

MR. SLAVENS: Objection, Your Honor.

THE COURT: Overruled.

A. No.

Q. You're sure? **(Page 110)** A. Positive.

Q. Okay. When'd you get back from vacation? A. I think it was around the 18th of July.

Q. Did you interrogate Terry Gallagher after that? A. Yes, I talked to him.

Q. When was that? A. It was either in July or August. Again we talked to him last Friday and I talked to him last night.

Q. Talked to him last evening. For how long did you talk to him last night? A. For about forty-five minutes.

Q. Does that have anything to do with the statement that's to be presented in this case? A. No. This is entirely different.

Q. How about all the other conversations, did you interrogate him with regard to the incident that's the subject of this trial? A. No.

Q. Never did? A. No.

Q. Didn't discuss that with him last night? A. (nodded no)

Q. Who's Mr. Helson or Hillison? A. He was the adult parole officer who at that time had under his jurisdiction

Kenny Leroy Carter who was also involved and we were looking for. **(Page 111)**

Q. Who was also involved in what? A. Series of armed robbery.

Q. You thought he was involved? Right? He hadn't been convicted of anything at that time, had he? A. No.

Q. So you assumed he was involved? Yes? A. Yes.

Q. You assumed this boy was involved? Right? A. No, we—

MR. SLAVENS: Objection, Your Honor.

THE COURT: Overruled.

MR. SCHWARZ: Goes to the whole purpose.

THE COURT: OVERRULED.

Q. You assumed this boy was involved, too, didn't you? A. From the statements received from—

Q. You can answer yes or no and then explain your answer. Yes or no. A. Yes.

Q. And you thought—you assumed that Dick Sorrell was involved? Right? A. No.

Q. You did not? A. No, we had a statement where he admitted his implication. **(Page 112)**

Q. Well, is that why you brought him up to the room where this boy was? A. I think we brought him up on the recommendation of Mr. Helson.

Q. He was brought up there? Right? A. Yes.

Q. You didn't need to question him any further, did you? A. Well, not—at that point, yes and at that point, no.

Q. Well, you certainly didn't need to question him in the presence of Terry Gallagher, did you?

MR. SLAVENS: Objection to what the term "need" means. Goes to a subjective element.

MR. SCHWARZ: I'll rephrase it.

THE COURT: Didn't hear what you said.

MR. SLAVENS: Objection to the term of what the detective needed.

THE COURT: Is the question withdrawn?

MR. SCHWARZ: Withdrew the question and rephrase it.

THE COURT: No ruling on the objection.

Q. For what reason did you take Dick Sorrell up to the interrogation room where you had Terry Gallagher? **(Page 113)** A. We talked with Terry for a while, and Mr. Helson felt we ought to bring Sorrell up. So, we did.

Q. What did Helson say he thought you should bring Sorrell for? He must have said. A. To either refute or corroborate what was said at that point.

Q. Or to put the heat on this boy and make him come clean up in the interrogation room? Right? That was the purpose of it? A. No, I don't think so.

Q. You don't think it was. Well ,to refute or corroborate what he said would that suggest that you didn't believe him? A. At that point we didn't know who to believe.

MR. SLAVENS: Objection, Your Honor.

Q. So you brought Sorrell up to confront Terry Gallagher up in that—what was that? A five by five or eight by five room? A. It's a small room.

Q. With five people in there? A. There was four, yeah.

Q. Did you tell Terry you better come clean, Sorrell's already made a statement? A. We told him Sorrell had given us a statement.

Q. So you better tell us what happened because Sorrell already gave as a statement? Right? A. Yes. **(Page 114)**

Q. Okay. Didn't you tell these boys both Sorrell and Terry if you cop out on one, we'll drop all these other

robberies? A. Well, from my standpoint of view in the county we could not positively identify Terry Gallagher.

Q. Sir, would you answer my question. If you want to explain you can. But did you or did you not tell these boys if you cop out to one we'll drop all these other robberies? A. I think that was told to them, yes.

Q. In your presence? Right? A. Yes.

Q. Okay. And Sorrell copped out, didn't he? A. He copped out before that. He was charged.

Q. Okay. And then you brought him up to confront Terry Gallagher up in the interrogation room? A. He was up, yes.

Q. And is it your testimony now that wasn't to put the heat on Terry Gallagher? A. They talked together by themselves. He wanted to—

Q. Would you answer my question.

(THEREUPON, the question and answer was read by the reporter.)

A. No, I don't think so.

Q. What was the purpose of it, then? A. Well, at that point Sorrell had indicated he wanted to talk to him, so we let him. **(Page 115)**

Q. Sorrell called up from downstairs and said "bring me up to the interrogation room"? A. He knew we had him in.

Q. Did you tell him? A. Yes.

Q. Well, you sent for Sorrell, didn't you? A. I went down and got him.

Q. You went down and got him. How long had you interrogated Terry Gallagher at that time? A. He'd been in there probably a half hour, forty-five minutes.

Q. And then you went and got Sorrell? A. Yes.

Q. For what purpose? A. On recommendation of Mr. Helson.

Q. For what purpose? A. To let them talk together.

Q. To let them talk together. A. Yes.

Q. Did they talk in your presence? A. No, they asked to be left alone.

Q. Did they ever talk in your presence? A. Yes, they did.

Q. Was Terry Gallagher interrogated in the presence of Dick Sorrell? **(Page 116)** A. I think so but I can't positively say.

Q. You don't positively remember? A. No, I don't.

Q. Do you positively remember what Terry Gallagher said during that interview? A. With Sorrell?

Q. No, just during your entire interview with him about the incident that's on trial here now? A. Yes.

Q. You recall all of that perfectly? A. Not perfectly.

Q. But you're not positively sure if Sorrell or if Gallagher was interrogated in the presence of Sorrell? A. We —they talked, we all went in and we talked to him. Detective Walsh talked to him. It was then decided—it was about 11:15. It was then decided that Sorrell was staying at our jail. We took him down. He checked out of the jail and they went over to the City Jail at that time.

Q. Well, your answer then is "no", you don't positively remember if Gallagher was interrogated in front of Sorrell? Is that your answer? A. I believe there was some questions asked. What they were at that point, I don't remember. **(Page 117)**

Q. How long did you interrogate Terry Gallagher that day? A. Myself?

Q. Yeah. A. Maybe a total of fifteen minutes. Most of it was handled by Detective Walsh.

Q. How long did Walsh interrogate him? A. Oh, probably a total of forty-five minutes, fifty minutes.

Q. And he was upstairs there from 9:15 'till 11:30? Right? A. Yes.

Q. Okay. What happened during the other hour and fifteen minutes or hour and a half? A. Him and Sorrell talked totally for about a half hour and I believe Mr. Helson talked to him for approximately a half hour by himself.

Q. By himself in that room? A. Yes.

Q. Where were you and Detective Walsh and Sorrell while this went on? A. Sorrell wasn't up there at that time.

Q. He hadn't been brought up yet? A. No.

Q. Did anyone during this as you call it, interview or interrogation, say, "well you know if you cop out we will give you a break" to Terry? **(Page 118)** A. Yes. He was told by me that I wasn't going to charge him at that point.

Q. And a lot of those other robberies that you all were interrogating these boys about and told them you'd drop if they copped out, you didn't have sufficient evidence on them, did you?

MR. SLAVENS: Objection, Your Honor to other charges.

MR. SCHWARZ: This goes as to the whole promises made to these persons to get their statements, Judge.

THE COURT: Going to OVERRULE the objection.

Q. Isn't that true? A. No. We could have identified Sorrell in most of them.

Q. Most of them? A. Yes.

Q. Not this boy? Right? A. I don't really know. I didn't attempt.

Q. Okay. You didn't attempt to? A. No.

Q. So you were promising really something that didn't

mean a whole lot because you didn't know if you had anything or not? Right?

MR. SLAVENS: Objection, Your Honor.

THE COURT: OVERRULED.

A. I didn't know how good the witnesses would be, no. I didn't know **(Page 119)**

Q. By the way, was Sorrell charged in this particular incident, the alleged robbery at the 7-11 Club on Xenia Avenue on May the 27th? A. I don't really know.

Q. You don't know? A. No.

Q. Isn't it a fact, Detective, that you took Sorrell and Gallagher up there at the same time? Or, do you remember? A. I may have. I don't know. I think—

Q. You don't know? A. They were up there together.

Q. One other question. You already had a statement from Sorrell, though? Right? A. Yes.

Q. So there was no need for you to further interrogate him, right, because you had your statement out of him? A. Most of the statement, yes.

Q. All right.

MR. SCHWARZ: That's all. Thank you.

THE COURT: Mr. Slavens?

Redirect Examination

By Mr. Slavens:

Q. I believe you were asked a question about a conversation **(Page 120)** you may have had with Mr. Gallagher in August. Is that correct? A. In July or August.

Q. And where did that conversation take place? A. That would have been in our building, detective section.

Q. And was that in reference to which offense or rather was that in reference to this particular offense? A. No.

Q. And I believe you were asked the question "did you interrogate him." Did you ever interrogate him that day as opposed to asking him questions or statements? A. Which day?

Q. Oh, the time in August.

MR. SCHWARZ: Judge, I went into that and asked him. I have an objection. Asked him if he interrogated about these things and he said no. So, if it doesn't pertain —well, I'll withdraw the objection.

THE COURT: No ruling then.

Q. Did you have a conversation with Mr. Gallagher in the month of August or sometime after-- A. After July 18th.

Q. After June 22nd, after this conversation? A. Yes.

Q. Where then did that—we'll call that the second conversation— A. Took place in our building, the detective section.

Q. And just so we have the record correct, did any statements **(Page 121)** or any facts in reference to this particular 7-11 robbery come out during that time? A. No.

Q. Now, during the time that Mr. Gallagher was in the interview room on June 22nd, 1972, other than statements made by him to you reference to the armed robbery at the 7-11 Store, did you state that there were other matters discussed? A. Yes, in reference to what my pertinent interest was as far as the county.

Q. All right. And after that, do you recall whether or not Mr. Gallagher made any statements to the effect that he would contest this matter? A. Yes, he said he was going to go to trial. You mean on the 22nd now?

Q. Yes. A. No, nothing on the 22nd.

Q. Did he make any statements similar to that one I asked earlier on a later date?

MR. SCHWARZ: I'm sorry. I don't even understand the question now, Judge.

THE COURT: I'm not sure I do either. Back up a step or two and rephrase it.

Q. During any of your conversations with Mr. Gallagher, did he ever make an indication to you that he would contest this matter? **(Page 122)** A. Yes.

Q. Now, just when did that occur? A. It was the interview you classify as the second interview.

Q. Can you recall what his statement was to you?

MR. SCHWARZ: Judge, I'm going to object. I don't know that this has anything to do with the admissibility of the statement made on the 22nd of June of this year.

THE COURT: SUSTAINED.

MR. SLAVENS: I believe that's all I have of this witness, Your Honor.

MR. SCHWARZ: No Recross.

THE COURT: Thank you, Detective.

MR. SLAVENS: Now, going into the motion and the matter of the admissibility of the statement, we have another witness.

THE COURT: Call your other witness.

MR. SLAVENS: State will call Detective Walsh.

.....

R. D. Walsh,

being duly sworn, according to law, took the witness stand and testified as follows:

Direct Examination

By Mr. Slavens:

Q. State your name please and your occupation. A. R. D. Walsh, Detective, Dayton, Ohio Police Department. **(Page 123)**

Q. And you are a detective. Are you assigned to any particular type of complaints? A. Robbery Squad.

Q. And were you so employed on the month of June, 1972? A. Yes, Sir, I was.

Q. How long have you been a detective with the Robbery Squad? A. On the Robbery Squad, approximately six years.

Q. And how long have you been a detective with the Dayton Police Department? A. Since 1955.

Q. Now, directing your attention to the date of June 22nd, 1972, I'll ask you if you on that date visited the building known as the Montgomery County Jail Building? A. Yes, Sir.

Q. And what was your purpose for going there? A. Lou Wright—Detective Lou Wright, Sheriff's Office, called and stated that they had in custody one Terry Gallagher whom (*Sic*) was wanted on a broadcast by the Sheriff's Office.

Q. And did you go over to the—so, then you went over to the County Jail Building? A. Yes, Sir, I did.

Q. And when you arrived there, where did you go and what did you do? **(Page 124)** A. Went to the detective's office, second floor, in Montgomery County Jail.

Q. And when you arrived on that second floor, who did you visit? Who did you see and what did you do? A. I talked with Detective Wright originally. He reiterated that they had Gallagher in jail and that he was a suspect for some armed robberies in the county along with a Richard Sorrell, who'd already been arrested and currently in custody.

Q. All right. And after speaking with or seeing Mr.—Detective Wright, who else did you see that day? A. I saw the parole officer Jerry Helson. I saw all the other detectives and Richard Sorrell and the defendant.

Q. When did you first see Terry Gallagher? A. Approximately 10:00 a.m. on the 22nd.

Q. All right. And when you're referring to Terry Gallagher and you have referred to him as the defendant, I'll ask you to examine the courtroom and see if he's here today, that individual? A. Yes, Sir, sitting along side Mr. Schwarz, at the counsel table.

Q. Indicate for the record what he's wearing today? A. White shirt, lavendar trousers, long hair and mustache.

Q. Indicating the defendant. When you saw Mr. Gallagher on the date of June 22nd, 1972, what did you do? What occurred after your visit with or during your visit with him? A. With who now? **(Page 125)**

Q. Terry Gallagher. A. First I introduced myself. Informed him that he was a suspect in some armed robberies. Read him a pre-interview form prescribed by the Prosecutor's Office, read it to him, outloud. After each paragraph I asked him if he understood. He stated he did; finally, he affixed his signature at the prescribed place, along with Detective Wright's.

Q. Now, I'll hand you what is marked State's Exhibit 2 for identification purposes and I'll ask you to state what that item is? A. This is the pre-interview form that I had reference to.

Q. And is that the one that was executed on the date of June 22nd? A. Yes, Sir. 1972. 10:35 a.m.

Q. Prior to that date, had you ever had any contact with Terry Gallagher, yourself? A. No, Sir. I never saw him before to my knowledge.

Q. And did you indicate that form was read to and explained to Mr. Gallagher in its entirety? A. Yes, Sir, I did.

Q. And how fast—or how did Mr. Gallagher act

during the time his Rights were being read to him? A. Very normal, nothing erratic. **(Page 126)**

Q. Did he indicate to you—did he indicate to you that he was, shall we say, druggish or sleepy or tired? A. No, Sir.

Q. Did he indicate to you an awareness as to what was happening? A. Yes, Sir. He stated he understood what I read to him.

Q. And were any threats made to him? A. No, Sir.

MR. SCHWARZ: Objection, conclusionary. Withdraw the objection.

THE COURT: Be no ruling then.

Q. Other than your reading that particular form to Mr. Gallagher and prior to a conversation with Mr. Gallagher, did you make any other statements to Mr. Gallagher? A. Could you repeat that please.

Q. You read the pre-interview form to Mr. Gallagher? A. Yes, Sir.

Q. And a conversation took place? Is that correct? Let me strike this again. Did a conversation take place between you and Mr. Gallagher? A. Yes, Sir.

Q. And that conversation took place after the pre-interview form was executed? A. Yes, Sir. **(Page 127)**

Q. Now, during the time, did any interval elapsed (*Sic*) between the time the pre-interview form was signed and the conversation took place, about the subject matter in question at that time, did you make any statements to Mr. Gallagher? A. No, Sir. The form was executed and signed practically all the same time. The conversation was after that.

Q. All right. Now, what was the first question asked of Mr. Gallagher after the form was executed? A. It would have to be a standard question. I don't have com-

plete recall but probably asked him if he was involved in any robberies in the City.

Q. And did—after being asked that question, did Mr. Gallagher indicate to you a willingness to answer your question? A. Yes, Sir. He'd (*Sic*) answered he was not at that time.

Q. All right. And during the conversation with Mr. Gallagher, did statements in reference to the 7-11 armed robbery on Xenia Avenue come forth? A. Yes, Sir.

Q. Did you, after the interview, transport Mr. Gallagher over to the Safety Building? A. Yes, Sir.

Q. And the purpose of that was what? A. For a—the incarceration and process of the prisoner in the Municipal Court system to be arraigned on a felony charge of armed robbery. **(Page 128)**

MR. SLAVENS: I believe that's all I have of this witness.

THE COURT: Mr. Schwarz, on Cross.

.....

Cross Examination

By Mr. Schwarz:

Q. Who all was present, Detective Walsh, when you interviewed Terry Gallagher? A. At the time of the execution of the form?

Q. During the whole interrogation. A. This covered a span of time whereas Detective Wright, Mr. Helson, Richard Sorrell, myself was present on different occasions.

Q. Were all of you present during some of it? A. Yes, Sir.

Q. Was Sorrell brought up at the same time as Terry Gallagher or was he brought up later? A. I saw Sorrell first and talked with Sorrell first.

Q. Did anyone tell Terry Gallagher over here (*Sic*) "Sorrell's already copped out, so you might as well cop out, too? You might as well speak up and admit it" or words to that effect? A. I informed Mr. Gallagher that Sorrell had implicated him on some of the robberies Sorrell was charged with.

Q. Some. Other ones, but not this one? Right? A. Yes, this one included. **(Page 129)**

Q. This one included? A. Yes, Sir.

Q. And you also indicated to Mr. Gallagher that some of these were Federal cases, didn't you? Federal raps? A. No, Sir. That was volunteered that they had some checks from someone in Troy, which would be under Federal jurisdiction.

Q. And didn't you tell them if they went Federal, they'd have to go through the Federal Court if you charged him here, they'd have to face one armed robbery here and if they'd cop out or someone else? A. That's what I told them.

Q. What did you tell them about copping out to one charge? A. As far as copping out I didn't tell them anything. Of their own freewill. (*Sic*)

Q. Okay. Entering a plea of guilty? A. I didn't mention entering a plea of guilty.

Q. You never did? A. No, Sir, I did not.

Q. Did you mention anything about only charging them with one charge and dropping other charges or not charging them with others? A. I agreed that we'd only charge him once, yes, Sir, as far as the City was concerned.

Q. You made him aware of the fact that he could be subject to Federal prosecution, didn't you? **(Page 130)** A. No. He made me aware of this fact.

Q. Didn't you tell him that's a Federal rap? A. What?

Q. The checks out of Troy. A. He told me he had some checks out of Troy.

Q. Did you tell him that's a Federal rap? A. Yes, Sir. I said that's a Federal violation.

Q. If they charged him on that you told him it was a Federal rap? A. He indicated he stole some checks from the mail.

Q. Just answer my questions. You don't have to put in the statements. Read the question back and ask him to answer yes or no. I realize this is an experienced witness and I don't need that given me.

(THEREUPON, the last question and answer was read by the Reporter.)

Q. You told him it would be a Federal rap? Yes or no. A. No.

Q. You did not tell him that? A. I did not use the terminology "rap".

Q. You told him it would be a Federal offense, the checks would be? A. It is a Federal offense, yes.

Q. It is a Federal offense, yes? A. Yes, Sir. **(Page 131)**

Q. Right. Would you describe your conduct when you walked into the interrogation room there? Withdraw that question. Isn't it a fact you walked into the interrogation room and threw a warrant down in front of Terry Gallagher here and said now I'm going to read your Rights to you? A. Definitely wrong.

Q. Definitely wrong. No offer was made by anyone to only charge this man and Sorrell with only one offense if they'd plead guilty to that offense? Is that right? A. Not to plead guilty, no, Sir.

Q. What was the deal? A. For the admission of the particular offense, namely the 7-11 Store on Xenia Avenue.

Q. If they made an admission to the robbery to the 7-11 on Xenia Avenue on May the 27th, the other charges

wouldn't be prosecuted- Is that right? A. What other charges?

Q. The other ones that you were discussing with him, the other robbery cases? A. Other robbery cases I can vouch for, yes, Sir.

MR. SCHWARZ: That's all. Thank you.

THE COURT: Mr. Slavens? **(Page 132)**

Redirect Examination

By Mr. Slavens:

Q. In reference to the statement made to you by Mr. Gallagher in reference—about the stolen checks, how did that transpire? What occurred? A. He called me over to the County Jail sometime after the preliminary hearing of this particular robbery we're in Court on today.

Q. Well, did the matter of the stole (*Sic*) checks, Is that when you first became aware of them?

MR. SCHWARZ: Object, leading.

THE COURT: SUSTAINED.

Q. When did you first become aware of the fact that the defendant was involved in some stolen checks, cases out of Troy, Ohio?

MR. SCHWARZ: Object. I don't know there's any such fact, Your Honor.

THE COURT: I believe this was testified to on Cross. We're going to allow the question. Objection OVERRULED.

A. Repeat the question, Sir.

Q. We'll reword it and distract (*Sic*) the word "fact". When were you aware by the defendant that he may be involved in some checks out of Troy, Ohio? What day? **(Page 133)** A. This was the same date of the interrogation of the robbery of the 7-11 Store.

Q. And what transpired in reference to that? A. The check cases.

Q. What was the conversation between you and Mr. Gallagher? A. He called me to the County Jail or the City Jail to ask me what would or could be done reference these check charges. I told him I would ask the Federal authorities to interview him to get it firsthand. Now, at the preliminary hearing, I sat down with Mr. Gallagher and told him I'd been informed by the Federal authorities they would not pursue prosecution of the check charges. This was of their own volition and not mine. I had no influence in it at all. No promises or anything else made by me. I told him I'd contact Federal authorities and apprise them of the fact that he was telling me of the checks.

Q. On the date of June 22nd, when the interview occurred, with Mr. Gallagher, yourself and Detective Lou Wright, what was the discussion then about the stole (*Sic*) checks or the checks from Troy, Ohio, and the fact that that was a Federal offense? A. This was just mentioned by the defendants during the interrogation and the admission of the other robberies and they wanted to clear up everything, including the check charges, any possible check charges. **(Page 134)**

Q. Okay. They volunteered that information to you? A. Yes.

MR. SCHWARZ: Object to "volunteer".

THE COURT: SUSTAIN the objection.

Q. To your knowledge, has Mr. Gallagher been charged with any other armed robberies as a result of the conversation you had with him on June 22nd, 1972?. A. Not as a result of that conversation, no, Sir. The City did not. I'm reasonably sure not the County.

Q. During the conversation that you had with Mr.

Gallagher did Mr. Sorrell make any statements to you? A. Yes, Sir.

Q. And to the best of your knowledge, Mr. Sorrell has not been charged in this particular armed robbery, has he? A. He has not, that's correct.

Q. At the time Mr. Gallagher was being questioned, had he been—he was arrested for that one particular armed robbery? A. Mr. Gallagher, you're saying?

Q. Yes. A. He was arrested on a broadcast by the Sheriff's Office for suspected armed robberies in their bailiwick.

Q. At the time the conversation took place on June 22nd, had Mr. Sorrell been charged with any robberies or armed robberies? **(Page 135)** A. I can't truthfully answer that if he was charged or not. He was not by the City, definitely.

MR. SLAVENS: I believe that's all I have, Your Honor.

THE COURT: Mr. Schwarz?

Recross Examination

By Mr. Schwarz:

Q. Detective Walsh, let me refresh your recollection and ask isn't it a fact that Sorrell had already been sentenced the day prior to your interrogation of Gallagher, had been sentenced in the Common Pleas Court of this particular Court prior to the day you interrogated Mr. Gallagher? A. I—we came and got Sorrell. I don't know if it was from a new charge or an old charge he was on. I believe A.P.B. at that time. I don't know honestly if he was charged at that time on a new charge or not.

Q. You say these men indicated they wanted to clear all these robberies up. Is that what you said? A. Yes, Sir.

Q. Isn't it a fact either you or Detective Wright or

both said why don't we clear up all these things and take care of all of them today or words to that effect?

MR. SLAVENS: Objection, Your Honor.

THE COURT: OVERRULED. **(Page 136)**

Q. Isn't that true?A. Not in the way you put it, no, Sir.

Q. Well, tell us how it was put? A. We—you've got to understand we talked with them firstly. We tell them they're going to be charged. To get everything off the books they've done and go into Court with clear conscious.

Q. Kind of clears up your paper work, doesn't it? A. Definitely, which I'm very much interested in.

THE COURT: Further questions, Mr. Schwarz?

MR. SCHWARZ: No, Sir.

THE COURT: Detective, let me ask this just to make certain that I've followed the testimony. Are you indicating that you and or Detective Wright told Mr. Gallagher that if he would admit or give a statement on the 7-11 matter that there would be no further charges? A. Not exactly like that, Your Honor. We were stymied as to which charge we will charge them on of the numerous places they'd admitted robbing. It was agreed with the County that Lou Wright would charge Sorrell with the one. Maybe already charged. That's the reason no additional charges were filed. I agreed to file one on Mr. Gallagher. But not with the stipulation they come out or whatever. **(Page 137)**

THE COURT: Well, regardless of what you and Detective Wright might have agreed on, what did you communicate to Mr. Gallagher in this regard? A. This is, in effect, what we told him. We'd only file the one charge. Said would be fine. Later he said he wanted to take his chance in Court to beat it.

THE COURT: In other words, I'm trying to get the

chronology and specifically what you say. Prior to his giving the statement you told him if he'd give the statement there would only be the one charge filed. I don't want to put words in your mouth. I am interested in the chronology and what was said. A. I'm at a loss as to how to relate to you what it means to us. One charge, it's a whole lot less effort on everyone's part if we file the one charge and we know he's responsible for the others. All incorporated in our report to the Court or to the Probation Department. Therefore, make into one ball instead of having three or four loose ones later on being subjected to be prosecuted on. We've got to passify (*Sic*) the complainants, you understand.

THE COURT: I understand that. I've got no quarrel with that. Not commenting on that one way or the other. I'm simply asking you what you told Mr. Gallagher? A. He indicated a willingness to tell us about this particular robbery with no other charges and I guaranteed him I would not file any additional charges. **(Page 138)**

THE COURT: Okay. Mr. Slavens, based on that, are there any further questions.

Further Examination by the State

By Mr. Slavens:

Q. Was it Mr. Gallagher who asked you to file one charge and he would proceed with the conversation reference to the other armed robberies? A. Yes, Sir. This is the one I was more interested in.

Q. What did Mr. Gallagher say to you to begin his conversation about the one charge only being filed against him? A. He was very sceptical (*Sic*) there would only be one charge. Said he'd been railroaded before by some other county. This is why he was reluctant to admit

to anything. Some policeman, parole officer north of here that promised him one thing and done the opposite.

Q. So he—is it true then he initiated the concept of only one charge being brought against him for his statement?

MR. SCHWARZ: Object.

THE COURT: SUSTAIN. Let the Court ask the question, Mr. Slavens. Did you state to Mr. Gallagher that if you admit the 7-11 matter, we'll only charge you once or on the other hand did Mr. Gallagher say to you if you'll only charge me once I will give this statement? Which was it? A. It was the latter. Mr. Gallagher expressed a willingness to give an admission to the robbery. **(Page 139)**

THE COURT: Mr. Slavens?

MR. SLAVENS: Nothing further, Your Honor.

THE COURT: Mr. Schwarz.

Further Examination by the Defense

By Mr. Schwarz:

Q. This giving an admission or willingness to give an admission was after he'd been informed if he did so he wouldn't be charged with the other matters, wasn't it? A. No, Sir, he's the one that approached it and wanted to deal.

Q. He said you guys drop all these others, I'll give you an admission on the 7-11 matter because it looks like that's the one you're interested in? Is that what he said or words to that effect? A. I wouldn't say that's what he said. It was along that avenue, yes, Sir.

Q. And he initiated this whole let's make a deal? A. Yes, Sir, he approached it.

Q. How did he approach it? A. He and Sorrell was in

a room together for a while and this is when it came about, after he and Sorrell talked.

Q. After he came out and who'd he make that statement to? You or Detective Wright? A. I believe Wright was with me. I was there, Sorrell was there, the defendant. **(Page 140)**

Q. And isn't it a fact that you did make a statement to Gallagher if you give us an admission on the 7-11 robbery that's the only one we'll charge you with? A. This was after he expressed to us this is what he wanted to do.

Q. I didn't ask you that. Didn't you make that statement to him? A. No, I agreed to it.

Q. Did you say it like I say it or words similar to it? A. No.

Q. All you said "okay, I'll go along with your deal"? A. Yes, Sir.

Q. But you were giving him a deal? A. No. I was giving him a break.

Q. Same difference. A. I don't think so.

Q. You were giving him a break. Okay.

MR. SCHWARZ: That's all.

* * * * * * * * * *

(Page 142)

MR. SCHWARZ: It think there's more involved here than the Miranda decision and I think the prosecutor mentioned the word in the last part of his statement. I think the test not only is the one—has the person been sufficiently advised of his Constitutional Rights and has he voluntarily waived the right to counsel, which is all that gets to. But, it's a matter of the Court considering the totality of the circumstances, which is a very old case, the Supreme Court case I believe of *Pouco vs, U.S.* It's about thirty years old. This was the test until the time of Escobedo (*Sic*) and Miranda. **(Page 143)**

Concerning the circumstances in this particular instance, the fact the defendant has in fact signed a Waiver, stating he wishes to make a voluntary statement or in this case, it doesn't go necessarily to the admission that was apparently made or the statement made to Detective Walsh and Detective Wright. As Detective Wright indicated, these boys were confronted with several armed robberies in which they were supposedly implicated and an offer was made, according to Detectives Wright—Detective Wright's testimony and according to the early testimony of Detective Walsh an offer was made. If you give us an admission in this case of the 7-11 Robbery, we won't charge any other cases. It's interesting to note that the advice of the detective or the counseling that those check cases were Federal cases was also discussed at this time and a later denial on the part of the Federal people to prosecute. Of course, this I think enters into the Court's consideration or should enter into it at this time.

The Court I think should consider the fact that they had interrogated this man. He was then confronted with a person known as Dick Sorrell who had already, they said, given a statement implicating this person, before he gave, they say, an admission.

The only, whole question goes not only to the Court considering the totality of the circumstances, but the **(Page 144)** voluntariness of the statement and what induced that willingness or voluntariness to make a statement. It's my position that the statement offered or the statement made was given in exchange for some consideration of not being charged with offenses as Detective Wright admitted that probably couldn't have been proven anyhow. This is mentioned in the Miranda case. Miranda versus Arizonia, statement of the Court that the voluntariness shall not be induced by coercion or trickery or the subtle uses of different methods by the interrogat-

ing police departments. I think this case is a perfect example of what the Court meant in that situation. These statements are not to be induced by promises of dropping other charges or whatever. If they're voluntarily made, they're supposed to be made subsequent to the reading of a Rights statement, a Waiver of same and then the direct questions. Not getting that Waiver signed as a formality of police and Court procedure and then proceeding to violate everything it means. But, in fact, ???ing it signed, asking the questions at this point and not then employing the very mechanics that that thing was designed to do away with. Thank you.

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(Page 145)

THE COURT: Thank you. Gentlemen, coming on to rule on the admissibility of the statement allegedly given on I believe the 22nd of June for which we have had a hearing, the **(Page 146)** Court will rule that the statement or statements are suppressed and, therefore, inadmissible. The Court feels that regardless of whether the promises was initiated by the officers as Detective Wright's testimony seems to imply or initiated by the defendant, as Detective Walsh's testimony indicated, it appears that this defendant when giving this statement did act or operate under promises of leniency, and, therefore, the Court feels that such action, which we feel could have been avoided by the officers in question, constitutes an involuntary statement and the Court, therefore, will decline to receive it.

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(Page 147)

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Bill Sykes,

being duly sworn, according to law, took the witness stand and testified as follows:

Direct Examination

By Mr. Slavens:

Q. Will you state your name please. A. My name is Bill Sykes.

Q. What is your age? A. I'm 26.

Q. And are you employed, Sir? A. Yes, I'm employed by the State of Ohio, the agency of the Adult Parole Authority.

Q. And during your employment, have you become acquainted with an individual by the name of Terry Gallagher? A. Yes. Mr. Gallagher was placed under my parole supervision when he was paroled from the Lebanon Correctional Institution on February 22nd. 1972.

Q. And since that date, February, did you say 22nd? A. Yes, 1972.

Q. Have you had occasions wherein you met with and counseled with Mr. Gallagher? A. Yes, many occasions.

Q. On the date of June 26th, did you have an occasion to visit or meet with Mr. Gallagher? **(Page 148)** A. Yes. After Mr. Gallagher was arrested, I went to the Montgomery County Jail for initial interview to see what the circumstances of the arrest were.

Q. Did you go to the place wherein you visit Mr. Gallagher under anybody's direction or do that on your own? A. It's part of my job when one of my fellows gets arrested, I'm to interview him and see what his circumstances are.

Q. And did you visit with Mr. Gallagher on the date of July 3rd, 1972? A. Yes, I did.

Q. On the date of July 3rd, how would you describe at that time your relationship with Mr. Gallagher? Was it a cordial relationship? A. Well, it was you know, considering the fact he was in jail, I guess it was normal. It wasn't a hostile or belligerent or anything like that.

Q. All right. I'm not talking about the visit, but your relationship? A. During parole superivision?

Q. Yes. How was that? A. It was fairly—well, it was normal. Terry—

Q. Was— A. —confided sometimes in me and other times it was **(Page 149)** superficial. But, it was, I don't know, it was kind of normal relationship parolee-client relationship, parole officer-client relationship. There wasn't a lot of you know, wasn't a lot of belligerence. We had a fairly decent rapport in other words, fairly decent.

Q. What occurred on the date of June 26th when you visited Mr. Gallagher? A. Well—

Q. What did you do when you first saw him? A. When I first you know saw him, I asked Terry if he would tell me what the circumstances surrounding the arrest were.

Q. Okay. A. That's usually the approach I make.

Q. And what did he say?

MR. SCHWARZ: Your Honor, I'm going to object at at this time. As prior to this person testifying as to any statements, I would like to have opportunity to conduct a special voir dire examination of him, with several things in mind. I would point out now or during the course of the voir dire examination—

THE COURT: What are the matters you have in mind, Sir?

MR. SCHWARZ: I want to raise the issue of **(Page 150)** the privileged communications or what I feel to be privileged communications between a parole officer, who is a, in fact, in one respect, an arm of the penal and judicial system of this State and is, in fact, although not a duly designated or authorized police officer, is a gentleman of the State and not of the State as such, but of the penal authority of the State. I feel there's a—of necessity a privilege as to communications between the parolee

and the parole officer, that must be respected in order for the parole officer and for the parolee to have any sort of communication or line of communication open, which makes it possible both for the parole officer and for the parolee to be able to communicate with regard to matters that may affect his continuance on parole or his being returned to the penal institution, in fact, his whole rehabilitation. I wish to raise that privilege and I wish to raise the confidential nature of the privilege and I wish to take advantage of the privilege, not on behalf of the parole officer but on behalf of my client.

THE COURT: These are the matters you'd hope to bring out in a voir dire examination?

MR. SCHWARZ: That's correct, Sir.

THE COURT: I understand the theory you are advancing, Mr. Schwarz. However, this being privileged relationship has not yet found sanction under the law. So I must OVERRULE your objection. **(Page 151)**

MR. SCHWARZ: Thank you, Sir.

THE COURT: Go ahead, Sir.

Q. And on the meeting with Mr. Gallagher, on July —excuse me, June 26th, what did, if anything, Mr. Gallagher state to you. Explain, please you know just what occurred at that meeting. A. Well, on June 26th he said at that time he didn't want to make any statement in regard to the circumstances surrounding the arrest.

Q. All right. What did you do then? A. Well, I said okay and I left and I came back at a later date to see if he wanted to tell me anything more than he told me before, which wasn't anything.

Q. When did you return then? A. July 3rd.

Q. And that's 1972 of course? A. Right.

Q. Approximately eight days later? A. Yes.

Q. And, again, you went there at your own discretion or your own? A. Part of my—

Q. Part of your voluntariness? A. Part of my job. **(Page 152)**

Q. Part of your job. You weren't directed by any authorities to go there? A. No one in particular told me to do that. That's part of my job to try to get some type of statement, some type of reason, et cetera, something I could work with, either way.

Q. And on the meeting of July 3rd, 1972, what did you do and what occurred? Explain to us the details of that meeting please. A. Well, at the July 3rd interview, I think because you know Terry, you know, we did have a fairly good rapport and I don't know why he did it, he just tell me—told me, in regard to the—well, felony he's accused of—

Q. If I might interrupt. A. On this armed robbery.

Q. On the date of July 3rd, any inquiries made by you or any statements made by the defendant or excuse me, Mr. Gallagher in reference to an armed robbery which occurred on May 27th, specifically? Specifically a 7-11 Store located at 405 Xenia Avenue. A. Yes.

Q. In other words, he made statements to you in reference to that particular incident? A. Yes, he did.

Q. What did he say to you?

MR. SCHWARZ: Raise the same objection for the record, Your Honor, for the same reasons.

THE COURT. Same ruling, Sir. The objection **(Page 153)** would be OVERRULED.

Q. You may continue with your answer. A. He told me that he, along with Dick Sorrell, went into the 7-11 Store on Xenia Avenue, and robbed it, using 1961—

MR. SCHWARZ: Object to the term "robbed" unless that's the exact term this defendant used, Your Honor.

THE COURT: Mr. Slavens, clarify this for us. The ruling will be held in abeyance.

Q. The terminology you're now using is that the language used by Mr. Gallagher in his statement to you? A. The statement he gave me was verbal.

Q. Right. But the terminology. A. And I wrote down what he gave me and—

Q. Well, specifically. A. And I would have to check my other notes to see. This was typed. I dictated this and this was typed from my notes, and, generally, I put down the same word my client uses, yes.

Q. All right. A. So, I'd say in all probability it was the same word.

Q. Okay.

MR. SCHWARZ: Same objection, Your Honor.

THE COURT: The objection would be OVERRULED.

Q. You may continue with what Mr. Gallagher said to you? **(Page 154)** A. Okay. He said he went into the store and robbed it, using a 1961 blue Ford station wagon, which he, Mr. Gallagher, borrowed from Clark Evans of 144 Valley Street, Dayton, Ohio. Terry said that both he and Sorrell had weapons. Terry said he had a .22 caliber automatic, black with brown handle, which he bought in bar called the "Den" on North Main Street. Terry said he bought this weapon approximately two months ago. However, about three days ago before he was arrested, he threw this gun into the river. Mr. Gallagher also told me that he bought a .30 caliber automatic at Joey's Bar on North Main Street, Dayton, Ohio, from a person unknown and according to Mr. Gallagher this pistol had been found by the police, being traced back to him through fingerprints. Also, Terry related that Dick Sorrell had used a .25 caliber automatic which was solid

black in color. And this is all the statement he made in regard to this robbery that he's charged with.

Q. Okay. The conversation that you had on July 3rd it continued, it did not terminate there but was that when the statement was given to you by Mr. Gallagher in reference to that particular 7-11 Store. Yes or no please. A. There was a little bit more in regard—in reference to this robbery.

Q. What was there additional, if any, said to you by Mr. Gallagher? A. Well, in reference to this robbery, well, he didn't exactly **(Page 155)** say there were other robberies involved—

MR. SCHWARZ: Object to any other robberies or anything of that nature, Your Honor.

THE COURT: We're going to SUSTAIN the objection at this point, Mr. Slavens. Your area is proper if you want to see what, if anything else was said about this particular offense, however.

Q. Without going into the other discussion or any respects of the discussion which you had with Mr. Gallagher in reference to any other matters that you may have interviewed Mr. Gallagher about, what, if anything, additional did Mr. Gallagher say to you in reference to the 7-11 Store on Xenia Avenue? Confine your answer to that one particular date? A. Well, in reference to that robbery, something else was mentioned and this was that a brown wig and sunglasses were used as a disguise.

Q. Did Mr. Gallagher tell you as to how the wig or the sunglasses were used or worn by whom? A. Well, he said he received the wig from Kenneth Carter who, according to Mr. Gallagher had several wigs of his own.

Q. Did Mr. Gallagher indicate to you who wore that particular object? A. Well, he said hisself, he used the wig in reference to this particular robbery. **(Page 156)**

Q. Did he indicate to you who wore the—did you say sunglasses? A. Yeah. It was brown wig and sunglasses.

Q. But did he indicate to you who wore the sunglasses? A. Yes; he did, Mr. Gallagher.

Q. Where there any other statements made to you by Mr. Gallagher in reference to this particular offense on 7-11 Store on Xenia Avenue? A. No.

Q. After the completion of that interview, what did you do? A. Well, I—after the completion of the interview, I asked him why he committed this offense.

Q. Okay. A. But then I left you know.

Q. Did he give you any answers to that?

MR. SCHWARZ: Object.

THE COURT: OVERRULED.

Q. Did he answer your question as to why he committed this particular offense? A. He gave me a statement, yes.

Q. Well—

MR. SCHWARZ: Same objections, for the record.

THE COURT: We'll OVERRULE the objection, Sir. **(Page 157)**

THE COURT: If you'd like, we'll show a continuing objection to this questioning.

MR. SCHWARZ: Thank you, Sir.

Q. He did answer your question as to why he did that? A. Pardon.

Q. He did answer your question, without going into it, he did make an answer to you? A. Yeah, he did give me a reason for this particular offense.

MR. SLAVENS: I wonder if Mr. Schwartz and I may approach the bench.

(THEREUPON, Mr. Schwarz and Mr. Slavens approached the bench and no record was made.)

Q. After discussing this particular matter with Mr.

Gallagher, did you ever make an attempt to locate the wig that he referred to? A. Yes, I did.

Q. What did you do in reference to that?

MR. SCHWARZ: I'm sorry. I didn't hear the last question and answer.

(THEREUPON, the next to the last question was read, the last answer was read and the last question was read.)

MR. SCHWARZ: Your Honor, at this time I'll ask that the witness close up all those notes he's reading from and give us some independent recollection. During all the testimony he has been reading notes so far. **(Page 158)**

THE COURT: I think this is well taken, Mr. Slavens. Care to have the witness refer to notes you may lay the proper foundation.

MR. SLAVENS: Yes, Your Honor.

Q. Well, still in reference to my last question what, after the interview, did you do in reference to the wig that was discussed? A. Well, I went to the last known address of where Mr. Gallagher was living and I interviewed the person who lived in the apartment that Terry was living at the apartment with this particular person. Well, person or persons, but when I went there this particular person was there and I talked to her.

Q. When you left that residence, did you take anything with you? A. Yes, in my conversation with her—

MR. SCHWARZ: Object to any conversation with the third person.

THE COURT: Well, at this particular point in time, I don't know whether he's going to go into the conversation or another direction. OVERRULE the objection at this point.

Q. You did have a conversation with the person there? A. Yes.

Q. Without going into that conversation when you left,

what did you take with you? A. I took a wig with me. **(Page 159)**

Q. And where—did you—from where did you get the wig? A. This person that I talked to gave it to me.

Q. What was the person's name? A. Her name was Linda Smith. I can check my records and get the correct—make sure it's the correct name.

Q. Is that the name she told you? A. Yes. Plus it was on her mailbox.

Q. And what was that address? A. 144 Valley Street. Again, I can verify it in two seconds.

Q. What did you do with the wig? A. Well, I took the wig—what can I tell you? Why I took the wig?

Q. Well, why'd you take the wig? A. She said—

MR. SCHWARZ: Object.

THE COURT: OVERRULED at this point.

Q. Why— A. The reason why I took—is it all right?

Q. You may answer the question. You may answer the question. A. I'm sorry. The reason why I took the wig is because she said it was the property—

MR. SCHWARZ: Object to whatever she said.

THE COURT: We would SUSTAIN the objection. You can't get into conversations had with other people, Sir. A. Okay. **(Page 160)**

Q. All right.

(THEREUPON, State's Exhibit No. 3 was marked for identification.)

Q. Sir, let me hand you an item that's been marked State's Exhibit 3 for identification purposes and ask you to state what that is? A. That's the wig that I took and I believe I put it in that bag which should—

MR. SCHWARZ: Object to what he believes.

THE COURT: SUSTAIN the objection.

A. This is the wig.

MR. SLAVENS: Nothing further, Your Honor.
THE COURT: Mr. Schwarz?

Cross Examination

By Mr. Schwarz:

Q. You said there was a—he told you he was wearing a brown wig and sunglasses? Is that correct? A. Yes, Sir.

Q. Did he actually say "Bill, we robbed this place, man." Is that what he said? A. He gave me more detail than that.

Q. Did he? A. Yes, Sir.

Q. What did he say? **(Page 161)** A. He said that he and Sorrell took part in a robbery of the 7-11 Store.

Q. Is that what he said, "Bill, me and Sorrell took part in a robbery"? A. Yes, Sir.

Q. Is that what he said? A. "At the 7-11 Store on Xenia Avenue".

Q. Didn't he tell you that he and Sorrell went in that place, but Sorrell was the only guy who pulled the gun? He never had a gun out? A. Yeah, he said Sorrell was the one that did all the talking and you know, pointed the gun at the clerk.

Q. And asked for the money, took the money? A. Yeah, Sorrell did everything.

Q. The whole bit, right? A. Right.

Q. He said all he did was stand there? Right? A. He said robbed them.

Q. Didn't he say "All I did was stand there"? Didn't have a gun out or anything? A. Well, he did say that he didn't pull a gun on anybody or anything like that.

Q. He just stood there? Right? A. He went into—stood, yeah. **(Page 162)**

Q. And didn't say a word? Right? A. Right.

Q. Now, Mr .Sykes, just prior to this conversation

you had with him, where he told you all these different things about this alleged incident— A. Right.

Q. —you had a conversation with him, didn't you, before he told you all of this? Right?

MR. SLAVENS: Objection, Your Honor. Question too general, "you had a conversation".

Q. I asked him before the statement did he have a conversation with him.

THE COURT: OVERRULE the objection.

Q. What's your answer? A. Yeah, I gave—I guess for a couple seconds I talked to him, yeah.

Q. Yeah, you had a little talk with him and you said "yeah, I need to know this stuff and it's confidential. You know, I wouldn't testify against you in Court or anything like that"? A. I didn't say that, Sir. I didn't say it was confidential.

Q. Could you wait until I finsh my question. I might change it at the end and you might want to change your mind. Okay. A. Um-humm. **(Page 163)**

Q. You never made that statement "I wouldn't testify against you. This is confidential." A. No, Sir.

Q. Aren't most of your conversations with your, you call them clients, confidential in nature?

MR. SLAVENS: Objection, Your Honor.

THE COURT: SUSTAINED.

Q. You did not indicate to this man it was a confidential conversation? A. No, Sir. Now, he might have assumed that it was, but I did not give him any reason to assume that.

MR. SLAVENS: Objection, Your Honor, to what he might have assumed.

THE COURT: We'll OVERRULE the objection.

Q. It is customary for your clients to tell you about their incidents of violating the law?

MR. SLAVENS: Objection, Your Honor.

THE COURT. SUSTAIN.

MR. SCHWARZ: Your Honor if I may, the reason I'm going into this—well, I'll approach it from further direction.

Q. Officer, isn't it fair to say that—yeah, you are a parole officer, isn't it fair to say that the parole officer-parolee relationship and attempt—your attempt is rehabilitation? A. Yes, Sir. **(Page 164)**

Q. Depends primarily upon the confidence that the client has in you?

MR. SLAVENS: Objection, Your Honor.

MR. SCHWARZ: I'll profer this if it's necessary, Your Honor. I think it's necessary to go to the privileged communication that I may be after on appeal. So, I'll need it for the record.

THE COURT: Let's profer it, (*Sic*) Mr. Schwarz. I'm going to SUSTAIN the objection.

MR. SCHWARZ: I'll read the profer (*Sic*) as I see it in the record with this witness here. If what I say is not as you would testify you stop me. Okay? A. Um-humm.

MR. SCHWARZ: Let the record show that for the purposes of this profer, (*Sic*) if this witness were permitted to answer the questions asked of him he would testify that the confidence of the parolee and the parole officer is one of the basis of the success or of the action to be taken in the rehabilitation of the parolee, that this confidential relationship or this existence of this confidence between the two is necessary in order for the parole officer to have full knowledge of the activities of the parolee. Is that a fair statement? A. You're talking about confidence. This isn't anything—I mean the client or the parolee does realize that I do represent authority and because of this aspect of my job, I—you know, the **(Page**

165) normal parolee, I don't see how he can put his full confidence in me because he does know I have the power to arrest him and I do have those duties.

Q. Okay. We'll go back on regular Cross. What arrest powers do you have? A. I have the power to arrest one of my clients if he's in violation of his parole.

Q. What other arrest powers? A. Only the power to arrest a parolee as a client of mine when he's in violation of his parole.

Q. That's the only arrest power? A. Yes, Sir.

Q. And what other authority do you have as far as recommendation of returning to the penal institution or staying on the street or whatever? A. What kind of power do I have, do you say?

Q. What authority do you have? A. What we do is make a—we report the facts or the information, then in a certain aspect of the report we give—what we think should be done to the client. In other words, should he be returned to the institution or should he be returned to the street.

Q. And you are an agent of the penal institutions of the State? Is that correct? **(Page 166)** A. No, I am an agent of the Adult Parole Authority, State of Ohio.

Q. Well, isn't that division a division of the department of corrections?

MR. SLAVENS: Objection to this Your Honor.

THE COURT: Going to OVERRULE the objection. Go ahead, Sir.

A. The Adult Parole Authority is an agency under the department of rehabilitation and correction.

Q. But all of its clients come from the penal institution, isn't that correct? A. Not all my clients.

Q. The Adult Parole Authority? A. The majority of my clients come from penal institutions, yes.

Q. And if they violate the provisions of parole, they are subject to arrest by you and returned to the penal institutions? A. I do not have that sole power. Like I said, all I do is suggest or recommend. The final decision is made out of a central office division.

Q. Prior to getting this statement from Terry Gallagher with regard to this matter, did you advise him of his Constitutional Rights, such as the right to have an attorney present? A. No, Sir. **(Page 167)**

Q. Or did you advise him that he didn't have to make a statement? A. I didn't advise him of his Rights. In other words, I did not tell him that the information he gave me could be used against him at a later date. I did not say that.

Q. You did not tell him the statement he was about to make could and would be used against him in a Court of law if he were charged with this offense? You didn't tell him that? A. No I didn't.

Q. You were aware he was under charge of armed robbery? Is that correct? A. Yes.

Q. Did you tell him he could stop at any time during the interrogation during the statement? A. Well, it was a very—I wouldn't term it "interrogation". It was just an informal talk. I mean I didn't force him to give me me any statements at all.

Q. You did not advise him of any of these Rights, isn't that correct, prior to getting the statement from him?

MR. SLAVENS: Objection, witness was answering the question. I think he was cut short.

THE COURT: The objection is SUSTAINED. Allow the witness to finish. Go ahead, Sir. A. In a formal way I did not say this, but on the other hand, I did not force him with any words of power, persuasion to give me **(Page 168)** anything.

Q. And he was in the jail, wasn't he? A. Yes, Sir.

Q. Under parole—as we call it "parole sticker"? A. He had the Adult Parole Authority detainer on him.

Q. Right. A. In addition to being there for armed robbery.

Q. And he was under $10,000.00 bond? A. Yes.

Q. Did you discuss the possibilities of whether or not he would be—would remain on parole prior to getting this statement from him? A. Could you rephrase the question?

Q. Did you discuss the possibility of his staying on parole or being returned to the institution prior to getting this statement from him? A. I don't believe I did, no.

Q. Did you back at the first interview, back on June the 26th when he told you he didn't want to make any statement about it? A. All I can recall saying is that I stated that I would like information in regard to the circumstances. I didn't say anything about — I didn't make any deals or promises in any manner, no.

Q. Where did the suggestion that you might have made a deal or promise come from? Did I suggest that to you? A. That's what it sounded like to me. **(Page 169)**

Q. Have you discussed Terry's case with Detective Walsh? A. Yes. After I received the—well, in regard to a particular incident I did, yes.

Q. When did you discuss it with him? A. Well, when Terry first got arrested, I—and it is our procedure to get the offense report and report of arrest and I came in contact with Detective Walsh in that regard.

Q. Did he make any statements to you with regard to Terry's case? A. I can't recall what—that was this past summer.

Q. Would your notes reflect that? A. Well, I might have something in here, yes, Sir.

Q. Why don't you look through there. A. There is one thing that we did discuss, was the wig.

Q. Um-humm. A. I mean when I did find the wig.

Q. Anything else? A. Anything else, in regard to Mr. Gallagher?

Q. Um-humm. A. Directly.

Q. To Mr. Gallagher in this incident, this 7-11 incident? A. Right.

Q. Did you discuss anything with regard to Mr. Gallagher in this incident with Detective Walsh? A. Yes. I talked to him, well on June 30th, 1972, I talked to **(Page 170)** Detective Walsh, in regard to the complaint of Alex E. Dean.

Q. What about?

MR. SLAVENS: Objection, to what Detective Walsh may have said.

MR. SCHWARZ: He's right here, Judge.

THE COURT: I'll OVERRULE it, allow this.

MR. SCHWARZ: Thank you, Sir.

Q. Go head. A. At this time—well, he informed that—

Q. Perhaps I can clarify this and save us all a little time here. Did Detective Walsh ever make any statements to you with regard to well, if you get a statement or know anything about it would you contact us? A. No, not at all.

Q. Never did? A. No, Sir.

Q. You approached him, right? A. Well, I always approach the Dayton Police Department, detective section.

Q. Um-humm. A. In order to get the offense report and report of arrest.

Q. Then when you get—I'm sorry. Go ahead. Were you through? A. Yes, Sir.

Q. And when you go to the jail to get a statement from the **(Page 171)** parolee, parole violator, accused, or whatever, do you take that statement with the intention of giving it to the police if it indicates some guilt? A. It is not our policy.

Q. It is not your policy? A. We don't do this. We don't give copies of our reports to the police departments.

Q. Well, did you make the statement that you have—did you make that known to Detective Walsh or to the Prosecutor in this case, or did they solicit that from you? A. What information—you mean the fact I'm here today?

Q. The statement you got from Terry, did you go to them and say "I have this statement", or did they call you and ask you if you had a statement? A. Well, I got subpoenaed into Court. That's the reason why I'm here, and I did not go to them and tell them that I have the statement from Terry Gallagher, no. They came to me.

Q. Have you ever discussed this statement with them prior to today? A. You mean the statement in regard to the details that I have mentioned?

Q. The statement that you say Terry Gallagher gave to you over in the City Jail, have you ever discussed that with anyone until today? A. Not actually, no, Sir. **(Page 172)**

Q. Have you talked to Detective Walsh about— A. In reference to the wig.

Q. Anything else? A. But, well, I did not you know give him details in regard to what I'm doing now.

Q. Well, did they call and say "did he give you a statement"? A. I don't remember them saying that, no, Sir.

Q. You just all of a sudden got a subpoena to come over here? A. Yes, I did.

Q. And had never discussed it with the Prosecutor or Detective Walsh? A. I never discussed it with the Prosecutor before.

Q. How about Detective Walsh? A. The only contact I had with Detective Walsh was getting the original offense report and report of arrest and to give him the wig. I mean, you know, I don't—I don't make it—the reason why I'm here, I was subpoenaed in. We don't volunteer. You know, this isn't a regular procedure that we have. I was subpoenaed into Court and I'm here.

MR. SCHWARZ: That's all for this witness.

THE COURT: One moment, Mr. Sykes. Mr. Slavens, Redirect?

MR. SLAVENS: There is one matter I wonder if Mr. Schwarz and I could approach the bench on.

(THEREUPON, Mr. Schwarz and Mr. Slavens approached the bench and no record was made.) **(Page 173)**

THE COURT: Mr. Slavens, any further questions?

MR. SLAVENS: If it please the Court, the State did make a prior objection. After I had considered that and my desire to have the Court aware of all the circumstances of the case, the State would, if the Court would accept it, withdraw that particular objection.

THE COURT: This is the objection to certain aspects of the confidentiality of conversations between parole officer and client.

MR. SLAVENS: Well, I believe it only goes to that one particular question, in reference to—yes, the confidentiality was the matter right before the profer (*Sic*) was made.

THE COURT: All right. Let the record show and we will tidy up the record in this way, the Prosecutor withdraws his objection to the question directly before the profer (*Sic*) and we will allow the questions profered into evidence as if they were asked and answered without objection. Anything further?

MR. SLAVENS: Nothing further, Your Honor.

THE COURT: Sir, you may step down. Thank you. I hate to keep running you gentlemen up and down like a yo-you, I would like to see you for a moment.

(THEREUPON, Mr. Schwarz and Mr. Slavens approached the bench. No record was made.)

THE COURT: Mr. Schwarz, you have a statement **(Page 174)** for the record.

MR. SCHWARZ: Yes, Sir. At this time, the defense moves to strike the entire testimony of the last witness, parole officer, Bill Sykes, with regard to any statements made by this defendant to Mr. Sykes on the dates he testified. The objection is made on the following ground: Prior to this time, the Court may wish to search the record. There has been no positive identification of this defendant at the scene of the robbery. The Court will recall and I didn't raise it at that particular time, because I just wanted to see if it would come out later on, and it did not. The only person who allegedly positively identified this defendant at the scene of this alleged robbery was the witness Alex Dean. The only testimony by Mr. Dean that this was the person—the defendant was the person that was there as he pointed over in the direction of this corner and he said the "gentleman in the blue shirt". The two people sitting in this corner at this time with blue shirts on were myself and the defendant. Now, which of the two he referred to was never cleared up for the record. The question was never asked, nor stated, let the record show that he indicated the defendant. That's the only positive identification of this person at the scene and that's the only thing that could fulfill the element—the one element going to the entire corpus delicti that would tie this **(Page 175)** defendant with the crime. Prior to that time, according to case of State of Ohio vs. Miranda, rather, Arizonia, (*Sic*)

no statements or admissions of the defendant are admissible. For that reason, the statements made to the parole officer should not be admitted against this defendant and his testimony should be stricken. Thank you.

THE COURT: Mr. Slavens, any comment before the Court rules.

MR. SLAVENS: Just briefly, Your Honor, that the defendant has been identified by the witness Alex Dean and would state correctly so.

THE COURT: Mr. Schwarz, the Court cannot recall whether or not the magic words, "the record will show the witness has identified the defendant" were actually used. However, as we recall from yesterday, there were, indeed, two people seated at counsel table in a blue shirt, yourself and the defendant. The defendant was wearing just a blue shirt, only a blue shirt. You were wearing a blue shirt, jacket and tie. We feel that the description, seated over there in a blue shirt, is sufficient to identify the defendant and the clothing he wore yesterday. We feel that if, in fact, the witness had intended to identify yourself, he would have added other articles of clothing you were wearing that were visible. With that in mind, we do feel there has been a sufficient identification of the defendant. We would OVERRULE your motion.

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(Mr. Schwarz arguing oral motion to dismiss after the State rested.) **(Page 194)**

. . . We'd speak now to the statement admitted over objection, of the parole officer. This man was in custody. I'm raising this more for the record than any other purpose at this point. In this custody, was deprived of any freedom. He's under the gun of the parole authorities. The parole officer came to talk to him once. He said he didn't wish to say anything. He came and talked to him again and elicited a statement of the facts surrounding his

arrest and that was his testimony. Now, whether that statement is suppose to (*Sic*) be an admission, whether that statement is suppose to (*Sic*) be, this is what the police say I've done. This is what evidence they have. This is why I'm under arrest. We don't know. It was never clarified. Never submitted as a confession or an admission against interest.

THE COURT: Mr. Schwarz, let me interrupt and ask you this. **(Page 195)**

MR. SCHWARZ: Yes, Sir.

THE COURT: You very ably argued this point last week. Have you found any law to support this position, or cases from other states holding a parole officer is not a law enforcement officer within the meaning of the Miranda decision so as to require the giving of the warnings?

MR. SCHWARZ: Yes, Sir.

THE COURT: Have you found anything in Ohio one way or the other?

MR. SCHWARZ: No, Sir, to my knowledge, there are no Ohio cases specifically on this point. I'm not arguing at this point Miranda only, Your Honor. I'm arguing—

THE COURT: Voluntariness.

MR. SCHWARZ: Voluntariness. I'm arguing Escobedo (*Sic*) as distinguished from Miranda. I'm arguing the Palpo case, the totality of the circumstance case, at least thirty years old and ask the Court to determine if it is within the principles of justice and fair play to take this person, who is deprived of any liberty and for all we know has had no counseling (*Sic*) from an attorney and to permit the parole officer to go in, under the color of his office and I think, none of us are naive enough to think he doesn't have the authority to do things and in fact put the fear of God in a parolee. **(Page 196)**

THE COURT: Do you feel Escobedo (*Sic*) applies only to police officers or a broader category of persons?

MR. SCHWARZ: Applies to anyone who acts under the authority of the State.

THE COURT: Again, any authority for this?

MR. SCHWARZ: There's no authority in Ohio, Your Honor. I haven't researched Escobedo (*Sic*) all the way out. No authority in Ohio as to parole officers. May make new law in this case.

THE COURT: In researching Escobedo, (*Sic*) of course, I'm interested in the scope of it; you need not zero in on parole officers. I'm wondering if it applies to any class of persons other than police officers. Have you an answer on that?

MR. SCHWARZ: No, Sir, I have not.

* * * * * * * * * *

(Page 200)

MR. SLAVENS: Well, using the term, the totality of the circumstances, we feel that from all the facts in evidence that that statement is—was voluntarily given, especially when you consider the fact the parole officer was there once and didn't force the defendant or didn't have the defendant say anything. He arrives again and the defendant starts talking and they have—I believe the parole officer stated, I think it is in the record, they talked for a considerable length of time about other matters and this is just one of the matters they talked about. And, with the fact that the parole officer, as a matter of routine, contacts the arrested parolee, in jail, and is not directed there by any law enforcement agency, it indicates the voluntariness of it, Your Honor. I don't know whether I have answered your question.

THE COURT: Yes, you have. Mr. Schwarz?

MR. SCHWARZ: I would reply only briefly to the

voluntariness again, Your Honor, and as Mr. Slavens points out, the man did go there the first time and the defendant indicated he did not wish to talk about it. At that point, I think it was the duty of the parole officer to let the thing drop. Even though those two cases that have been mentioned, two cases, the Miranda and the Escobedo (*Sic*) case, may not, as to case holdings in other jurisdictions, apply to parole officers, this man indicated that he didn't wish to make a statement. The parole officer then returned **(Page 201)** some four or five days later and again asked him or interrogates him about the same circumstances. This man is on parole at this time, and I'm sure the Court is aware of the possibilities if the parolee does not, in fact, cooperate and be cooperative with his parole officer. That man, at that time, is the man between the parolee and the institution only. I think that the Court, in considering the voluntariness of using the totality of the circumstances test, would have to agree that if this person, involves an attorney, too, did have an attorney, would never have answered any questions or made any statements. It's a total overscheming of the inferred confidential relationship that's really a necessity to the parole officer-parolee relationship. It has to be there. Without that, there wouldn't be an effective parole. No one will say anything to anyone. There's not an effective communication.

THE COURT: Coming on to rule on the motion of the defendant, we are sitting here without a jury. The Court is going to OVERRULE the motion at this time. We feel there's been a sufficient showing of each and every element to warrant the case going forward at this time. We do intend to do some more research on the point you raised last week and have raised again today, however. We'll do this at the conclusion of the case. Mr. Schwarz?

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(Page 202)

Terry L. Gallagher,

being duly sworn according to law, took the witness stand and testified as follows:

Direct Examination

By Mr. Schwarz:

Q. State your name for the Court, Terry. A. Terry Francis Gallagher.

Q. You're the defendant in this case? A. Yes, Sir.

Q. Terry, you've heard the testimony concerning the 27th of May, 1972, an alleged robbery at the 7-11 Store on Xenia Avenue. I'll ask you if you were, in fact, in that store on the 27th of May, 1972? A. No, Sir.

Q. Let me ask you this, Terry. Have you ever, prior to your incarceration in the jail over here on June the 12th, 1972, have you ever worn a mustache? **(Page 203)** A. No, Sir.

Q. Never have? A. No, Sir.

Q. How'd you happen to grow that? A. Because some gentleman in the county jail told me it would make my face look thinner if I wore a mustache. That's the reason I grew a mustache.

Q. Do you own a blond-colored wig? A. No, Sir.

Q. Now, after you were arrested you were taken where? To the City Jail, City of Dayton? A. No, Sir.

Q. Where were you taken? A. County Jail.

Q. Were you eventually taken to the City Jail? A. Yes, Sir.

Q. And you were arraigned over there? Is that correct? A. In the City Jail?

Q. In the City Jail. A. Yes, Sir.

Q. In the Dayton Municipal Court? A. Yes, Sir.

Q. Did you at that time have the funds to hire an attorney? A. No, Sir. **(Page 204)**

Q. Did you request that an attorney be appointed for you? A. Yes, Sir.

Q. At what point in time did you do that? A. When they had my arraignment.

Q. Do you recall approximately what date that was? A. No, I don't recall the exact date.

Q. How many days was it after you were arrested? A. Six or seven days.

Q. And you were arrested June 11th or 12th? A. June 21st.

Q. June 21st. And when was the first time you saw an attorney after you requested one be appointed for you on arraignment? A. On July 3rd.

Q. July the 3rd? A. Yes, Sir.

Q. You've heard the testimony of your parole officer Sykes. Can you tell the Court about that please? A. Well, he came to the City Jail. I don't remember the exact day. It was a few days after I was arrested, and he asked me if I had anything to state at the time. And I told him I had nothing to say. And he returned, I think it was July 2nd or 3rd, and he asked me if I would give him the evidence surrounding my arrest. **(Page 205)**

Q. Now, had you been afforded an opportunity to talk to an attorney at that time? A. No, Sir.

Q. Go ahead. A. And I told him the evidence that was given to me about my arrest.

Q. Given to you by whom? A. By the detective, arresting officer.

Q. Who was that? A. Detective Walsh and Lou Wright.

Q. What did you relate to Mr. Sykes? A. I told him that the police believe me and Richard Sorrell went to the 7-11 Foodstore on Xenia Avenue in a 1961 Ford I believe it was, with intent to rob.

Q. Have you had any conversation with Sykes since then? A. Yes, Sir.

Q. When was the last time? A. Approximately two hours ago.

Q. What did he relate to you about the testimony he gave the other day at that time?

MR. SLAVENS: Objections, Your Honor.

THE COURT: OVERRULED.

A. He told me that he knew that I wasn't giving a confession, that I was just giving him the confession surrounding my arrest.

(Page 206)

MR. SCHWARZ: Cross.

THE COURT: Mr. Slavens on Cross.

Cross Examination

By Mr. Slavens:

Q. You indicated that you grew the mustache since you've been in jail to make your face what? Look thinner? A. Yes, Sir.

Q. Why were you concerned about your face looking heavy or puffier? A. Yes, Sir.

Q. Do you own a wig? A. Yes, Sir.

Q. What kind do you own? A. It's sitting right there in that sack.

Q. Let me hand you what's been marked State's Exhibit 3 for identification purposes. A. Yes, that's my wig.

Q. And you were arrested you stated on June 21st, 1972? A. Yes, Sir.

Q. And do you recall the name of the police officer who arrested you? A. No, Sir. It was a deputy sheriff.

Q. Do you know the deputy sheriff's name who arrested you? A. No, Sir. **(Page 207)**

Q. Do you recall if he was in uniform? A. He was in a deputy sheriff's uniform.

Q. Yeah. Was not dressed in civilian clothes? A. No, Sir.

Q. I believe you stated you spoke to Mr. Sykes a couple hours ago. A. Yes, Sir.

Q. And your testimony is that you told him what the police had told you when you were arrested? A. He asked me for the evidence surrounding my arrest and I told him what the police had told me.

Q. Right. In other words, when Mr. Sykes interviewed you the second time? A. That was for the second time.

Q. Well, when was the second time? A. July the 2nd or July 3rd I believe. I'm not quite sure.

Q. One time you were in jail, he came and visited you, you wished not to say anything. He left. A. Yes, Sir.

Q. And the next time he came, you did talk with him? A. Yes, Sir.

Q. And you weren't forced to talk to him? A. No, Sir.

Q. You didn't have to talk to him? You knew that? Right? A. Yes, Sir. **(Page 208)**

Q. And what you said to him was voluntarily given by yourself? A. Yes, Sir.

Q. You don't deny that? A. No, Sir.

Q. So that was the second time you talked to Mr. Sykes? A. Yes, Sir.

Q. And your testimony is that what you told him on the second interview was what the police had told you? A. Yes, Sir.

Q. And then you talked to Mr. Sykes once since the

last time Mr. Sykes testified, a couple hours ago? A. I've talked to him numerous times since I've seen him.

Q. Have you? A. But I seen him just a few hours ago.

Q. And when did the police tell you that they found your wig at 144 Valley Street? A. They didn't. The parole officer told me that.

Q. How'd he know that? A. Because—

MR. SCHWARZ: Object to how he knew whatever he knew, Judge.

THE COURT: We would SUSTAIN the objection.

Q. Did the police know you were living at 144 Valley Street? **(Page 209)**

MR. SCHWARZ: Object to what the police know.

Q. Did the police tell you you were living at 144 Valley Street?

THE COURT: We're going to SUSTAIN the objection for the record. You may repeat this last question, Sir. That has not been objected to.

MR. SLAVENS: Yes, Sir.

Q. Did the police tell you you lived at 144 Valley Street? A. No, Sir.

Q. Did the police tell you you lived with a girl by the name of Linda Smith? A. No, Sir.

Q. Did the police tell you you borrowed a car from Clark Evans? A. Yes, Sir.

Q. Did they tell you that you had a .22 caliber black and brown handled pistol? A. No, Sir, not that description.

Q. Did he tell you that Morgan Sorrell or Dick Sorrell had a .25 automatic pistol? A. I don't recall the gun they told me. They told me he had an automatic pistol.

Q. And you heard Mr. Sykes testify that you told him about the wig at 144 Valley Street and that you lived with Linda Smith? A. No, Sir. **(Page 210)**

Q. You didn't hear him say that? A. No, Sir. He didn't refer to nothing about the wig, except for he got it from there.

Q. Prior to your talking to Mr. Sykes the second time when you talked with him, have you been advised of any Rights that you had? A. Yes, Sir.

Q. Do you recall when that was? A. It was on the morning Detective Walsh and Detective Lou Wright took me upstairs to the interrogation room.

Q. Did you understand those Rights? A. Yes, Sir.

Q. Do you recall whether or not you executed any particular form? A. No, Sir. Just a Rights form I signed if that's what you're referring to.

Q. Yes. You signed what's known as a pre-interview form? A. Yes, Sir.

Q. I'd like to hand you an item that's marked State's Exhibit 2 for identification purposes and ask you if you recognize that? A. Yes, Sir.

Q. Was that the form you were referring to that you executed the morning after your arrest? A. I guess it has to be the same one. My name's on the bottom.

Q. You don't deny that's your name? A. No. That's my name. **(Page 211)**

Q. And you did sign one? A. Yes, Sir.

Q. Do you recall whether or not on that day that you executed that particular form you saw Mr. Sorrell? A. Yes, Sir.

Q. And where was he? A. He brought with me to the detective's office, same time I was.

Q. And at that time did Mr. Sorrell make any statements to you? A. Referring to what?

Q. Well, let me rephrase the question. You spoke with Mr. Sorrell that day in front of the detectives? Is that correct? A. He was in the room.

Q. Did he speak to you? A. Yes.

Q. Say "hi" or anything? A. Yes, Sir.

Q. Do you recall whether or not during that conversation with Mr. Sorrell he made any statements to you in reference to the armed robbery at 7-11 Store?

MR. SCHWARZ: Object, relevance.

THE COURT: Read the question if you would.

(THEREUPON, the last question was read by the court reporter.) **(Page 212)**

THE COURT: Mr. Slavens, relevancy?

MR. SLAVENS: Yes, Your Honor. We feel that on direct examination this defendant denied that he was in that store at that particular time, and we have a right to go into what was said to the defendant by Mr. Sorrell on this particular date.

MR. SCHWARZ: Your Honor, I feel that has no relevance whatever, even if Mr. Sorrell would have pointed his finger and said "this guy was with me". It wouldn't be relevant. That's what someone else said. That's hearsay.

MR. SLAVENS: But, it's —

THE COURT: I'm going to SUSTAIN the objection.

Q. On the date that this form was executed, did you make any statements to the police department officials, either the Dayton Police Department or the Montgomery County Sheriff's Officials in reference to your involvement, if any, in the armed robbery at the 7-11 Store? A. No, Sir.

Q. You did not tell them that you were driving a particular type of automobile and that you went to that 7-11 Store? A. No.

MR. SCHWARZ: Object to any statements allegedly made on that particular date to the police department. It's already been suppressed.

THE COURT: SUSTAINED. **(Page 213)**

Q. Where were you living when you were arrested? A. I was living at 2104 Salem Avenue, but I was also staying with a gentleman on Valley Street.

Q. Do you know that address? Is that 144? A. 144 Valley Street.

Q. And what was that person's name? A. Clark Evans.

Q. What kind of car does he have? A. '61 blue Ford station wagon.

Q. Have you ever driven that car?

MR. SCHWARZ: Object, relevance.

THE COURT: Relevancy, Mr. Slavens?

MR. SLAVENS: I will withdraw that question and rephrase it, Your Honor.

THE COURT: Be no ruling then on the objection.

Q. Do you recall whether or not you were driving that car May 27th, 1972? A. Well, you asked me was I driving that car that day?

Q. Yes. A. No, Sir, I wasn't.

Q. On the date of May 27th, 1972, did you ever associate with, have company with an individual by the name of Mr. Sorrell? A. No, Sir. **(Page 214)**

Q. What did you do that day? A. I don't really recall exactly what I did that day. I was arrested a month after that robbery took place.

Q. But you know for a fact that you were not in the 7-11 Store? A. On that particular day, yes.

Q. Well, than what did you do on that day? A. I really don't recall.

MR. SCHWARTZ: Object, rel — repetitive, Your Honor, having just been answered.

THE COURT: We're going to SUSTAIN the objection.

Q. But you know that on that day you were not in a blue Ford owned by Mr. Clark Evans and you know

that you were not with Mr. Sorrell, you know that you were not at the 7-11 Store, but yet you do not know what else you did?

MR. SCHWARZ: That's argumentative.

THE COURT: We are going to SUSTAIN the objection to the manner in which the question is phrased.

Q. Do you recall what you did on May 26th, 1972? A. No, Sir.

Q. Do you recall whether or not you saw Mr. Sorrell on May 28th, 1972, which would have been a Sunday? A. No, I don't recall. I knew what I was doing the next day.

Q. What were you doing? **(Page 215)** A. I went to Indian Lake with mother and father.

Q. Okay. A. On a Monday, it was some holiday.

Q. Do you know where that 7-11 Store on Xenia Avenue is? A. Not for sure. I'm not sure where it's at.

Q. You indicated that Mr. Sykes in your interviews with Mr. Sykes, he testified about, you indicated to him the facts of your arrest? A. Yes, Sir.

Q. And he asked you questions about — did he ask you questions about the 7-11 Store incident? A. Yes, Sir and numerous other things.

Q. And were those other things related to your arrest? A. No, Sir.

Q. But when you were interviewed, did Mr. Sykes ask you what you did on May 27th, 1972? A. No, Sir.

Q. Do you recall giving Mr. Sykes information about other dates on his second interview with you? A. He questioned me about other things that happened within the City of Dayton, yes.

Q. And dates were mentioned? A. Yes, but I don't remember the dates.

Q. But at that time you knew the incidents that he

was referring **(Page 216)** to? A. Not particularly.

Q. Well, didn't you hear Mr. Sykes testify that you admitted this crime to him? A. I remember you asked him a question and he said he was given the facts—he'd asked me the evidence surrounding my arrest, if you'll look at the thing there.

Q. So your answer to my question is what? Yes or no? A. Yes.

Q. And one further question, Mr. Gallagher, have you ever been arrested and convicted for a State or Federal offense?

MR. SCHWARZ: Object.

THE COURT: Basis?

MR. SCHWARZ: One is the—I don't have a citation right off hand, but it's a U. S. District Court ruling that says that's not a proper question. It's not a State court ruling, it's U. S. District Court. It's the same one that touches or involves also the question of the—it's the case that has to do with the dead time ruling in the jail while awaiting trial. I believe that same issue is in that case if I'm not mistaken.

THE COURT: Read the question back.

(THEREUPON, the last question was read by the court reporter.)

THE COURT: In the sense the two phrases are used with the conjunctive "and", we're going to OVERRULE the **(Page 217)** objection. The question may be answered. A. Yes, Sir.

Q. Explain what and when.

MR. SCHWARZ: Object. Question is have you ever been arrested and convicted. Goes to credibility I believe only for the purposes of credibility only and once the question is asked and answered, I don't think

the going into the details or facts of the other cases is admissible, Your Honor.

THE COURT: Mr. Slavens?

MR. SLAVENS: I believe in order to go into the area of credibility that my last question is one which logically follows and is proper.

THE COURT: I'm going to OVERRULE the objection and allow the question to be answered. We will restrict questions following this, however.

A. What was the question? I don't know the exact date when I was arrested, but I've been arrested numerous times.

THE COURT: The question is not whether you've been arrested. It's whether you've been arrested and convicted. A. Yes, Sir.

Q. And for what offense and when the year was, if you can remember that? **(Page 218)** A. It was in February of 1970, I believe for malicious entry in Miami County.

Q. Yes, Sir. A. I done answered the question.